

LUFKIN DIVISION

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The capacity of an entity to sue or be sued is determined by the law of the state in which the district court is held. FED. R. CIV. P. 17(b). There is no evidence that Polk County has taken steps to grant their Sheriff's Department with jural authority. Thus, the Polk County Sheriff's Department is not a legal entity capable of being sued. *See Darby v. Pasadena Police Dep't*, 939 F.2d 311, 314 (5th Cir. 1991) (holding that a lawsuit brought against the Pasadena Police Department was subject to dismissal because the entity had no jural existence); *Cleveland v. Liberty County Sheriff's Dep't*,


No. 1:13-CV-20, 2014 WL 11858157, at *3 (E.D. Tex. May 5, 2014) (holding that the Liberty County Sheriff's Department is not a legal entity that has the capacity to be sued).

The official capacity claims against defendants Hammock, Phillips, Clevenger, Cole, Jenkins, Skarpa, and Wright are, in essence, claims against Polk County. *See Brumfield v. Hollins*, 551 F.3d 322, 331 n. 9 (5th Cir. 2008). Therefore, the claims against the individual defendants in their official capacities should be dismissed. It is accordingly

ORDERED that defendants' motions to dismiss the claims against the Polk County Sheriff's Department (document no. 3) and the claims against the individual defendants in their official capacities (document no. 4) are **GRANTED**.

So Ordered and Signed

Sep 6, 2019

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, Senior District Judge